

**WB-35 SIMULTANEOUS EXCHANGE AGREEMENT**

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1 **THE BROKER DRAFTING THIS AGREEMENT ON \_\_\_\_\_ [DATE] IS THE AGENT OF (FIRST PARTY)(SECOND PARTY)**  
2 **(BOTH PARTIES) ~~STRIKE TWO~~** **CAUTION: NOT TO BE USED FOR "STARKER" EXCHANGES.**

3 **GENERAL PROVISIONS** First Party and Second Party agree to exchange Property One for Property Two. As used in this Agreement:

4 First Party is \_\_\_\_\_.

5 Second Party is \_\_\_\_\_.

6 Property One is \_\_\_\_\_.

7 Property Two is \_\_\_\_\_.

8 As to Property One, First Party is Grantor and Second Party is Grantee. As to Property Two, Second Party is Grantor and First  
9 Party is Grantee. Unless otherwise indicated, the words "Property", "Grantor", and "Grantee" shall apply separately to both aspects  
10 of the transaction (See lines 267 to 272).

11 ☐ **ADDITIONAL CONSIDERATION:** At closing ☐ First Party ☐ Second Party shall pay the Other Party cash in the amount of \$ \_\_\_\_\_.  
12 ☐ **OTHER CONSIDERATION:** At closing ☐ First Party ☐ Second Party shall: \_\_\_\_\_  
13 \_\_\_\_\_

14 **Note: If assuming mortgage(s) consider terms and balance of mortgage, lender approval, etc.**

15 ☐ **FIXTURES AND OTHER PROPERTY:** Included with the real property exchanged under this Agreement are all fixtures (See lines 263 to 266)  
16 as may be on the Property on the date of this Agreement, unless excluded at lines 22-25 and the following additional items:

17 **PROPERTY ONE:** \_\_\_\_\_  
18 \_\_\_\_\_

19 **PROPERTY TWO:** \_\_\_\_\_  
20 \_\_\_\_\_

21 All personal property will be transferred by Bill of Sale, free and clear of all liens and encumbrances, subject to tenants' rights.

22 ☐ **ITEMS NOT INCLUDED IN THIS AGREEMENT:** **CAUTION: Address rented fixtures or trade fixtures owned by tenants, if applicable.**

23 **PROPERTY ONE:** \_\_\_\_\_

24 **PROPERTY TWO:** \_\_\_\_\_

25 **NOTE: Attach a schedule to identify additional included or excluded personal or other property, as needed.**

26 ☐ **TIME IS OF THE ESSENCE** as to: (1) binding acceptance; (2) occupancy; (3) date of closing; (4) contingency deadlines; ~~STRIKE AS APPLICABLE~~  
27 and all other dates and deadlines in this Agreement except: \_\_\_\_\_

28 **BINDING ACCEPTANCE** This Agreement will only be binding if a copy of the Agreement, which has been signed by or on  
29 behalf of each Party (Note: each Party, or an authorized agent, must sign for this Agreement to be valid.), has been  
30 delivered to both Parties on or before \_\_\_\_\_.

31 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Agreement, delivery of documents and  
32 written notices to a Party shall be effective only when accomplished in any of the following ways:

33 (1) By depositing the document or written notice postage or fees prepaid in the U.S. Mail or fees prepaid or charged to an account with a  
34 commercial delivery system addressed either to the Party or to the Party's recipient for delivery designated at lines 37 or 39 (if any), for  
35 delivery to the Party's delivery address at lines 36 or 38.

36 First Party's Address: \_\_\_\_\_

37 First Party's recipient for delivery (optional): \_\_\_\_\_

38 Second Party's Address: \_\_\_\_\_

39 Second Party's recipient for delivery (optional): \_\_\_\_\_

40 (2) By giving the document or written notice personally to the Party, or the Party's recipient for delivery if an individual is designated at lines 39 or 39.

41 (3) By electronically transmitting the document or written notice to the following telephone number:

42 First Party: (\_\_\_\_\_) \_\_\_\_\_ Second Party: (\_\_\_\_\_) \_\_\_\_\_

43 Any signed document transmitted by fax shall be considered an original document and shall have the binding and legal effect of an  
44 original document. The signature of any Party upon a faxed document shall be considered an original signature.

45 **LEASED PROPERTY** If Property is currently leased and leases extend beyond closing, Grantor shall assign Grantor's rights under the  
46 lease(s) and credit all security deposits and prepaid rents thereunder to Grantee at closing. The terms of the (written) (oral) ~~STRIKE ONE~~  
47 lease(s), if any, are \_\_\_\_\_  
48 \_\_\_\_\_

49 **PROPERTY CONDITION PROVISIONS**

50 ☐ **PROPERTY CONDITION REPRESENTATIONS:** Grantor represents to Grantee that as of the date of Grantor's signing of this Agreement  
51 Grantor has no notice or knowledge of conditions affecting the Property or transaction (as defined at lines 227 to 246) other than those  
52 identified in Grantor's disclosure report (Property One report dated \_\_\_\_\_, Property Two report dated \_\_\_\_\_) which  
53 was received by Grantee prior to Grantee signing this Agreement ~~COMPLETE DATE OR STRIKE AS APPLICABLE~~, and the following:

54 **PROPERTY ONE:** \_\_\_\_\_  
55 \_\_\_\_\_

56 **PROPERTY TWO:** \_\_\_\_\_  
57 \_\_\_\_\_

58 ■ **REAL ESTATE CONDITION REPORT:**

59 Wisconsin law requires Grantors of property which includes 1-4 dwelling units to provide Grantees with a Real Estate Condition Report.  
60 Excluded from this requirement are sales of property that has never been inhabited, sales exempt from the real estate transfer fee, and  
61 sales by certain fiduciaries, (for example, personal representatives who have never occupied the property). The form of the Report is found  
62 in Wis. Stats. 709.03. The law provides: "709.02 Disclosure...the owner of the property shall furnish, not later than 10 days after acceptance  
63 of the contract of sale, to the prospective Grantee of the property a completed copy of the report.... A prospective Grantee who does not receive a  
64 report within the ten days, may within two business days after the end of that ten day period, rescind the contract of sale by delivering a  
65 written notice of rescission to the Grantor or the Grantor's agent". Grantee may also have certain rescission rights if a Real Estate Condition Report  
66 disclosing defects is furnished before expiration of the 10 days, but after the Agreement is submitted to Grantor. Grantee should review the  
67 report form or consult with an attorney for additional information regarding these rescission rights.

68 ■ **PROPERTY DIMENSIONS AND SURVEYS:** Each Party acknowledges that any Property, building or room dimensions, or total  
69 acreage or building square footage figures, provided to that Party may be approximate because of rounding or other reasons, unless  
70 verified by survey or other means. Each Party also acknowledges that there are various formulas used to calculate total square footage  
71 of buildings and that total square footage figures will vary dependent upon the formula used. **CAUTION: Each Party should verify**  
72 **total square footage formula, Property, building or room dimensions, and total acreage or square footage figures, if the**  
73 **information is material to the Party.**

74 ■ **INSPECTIONS:** Grantor agrees to allow Grantee and Grantee's inspectors reasonable access to the Property upon reasonable notice  
75 if the inspections are reasonably necessary to satisfy the contingencies in this Agreement. Grantee agrees to promptly provide copies of all  
76 third-party inspection reports to Grantor, and to listing broker if Property is listed. Furthermore, Grantee agrees to promptly restore the  
77 property to its original condition after Grantee's and Grantee's inspector's inspections are completed, unless otherwise agreed with Grantor.  
78 **Caution: See lines 275 to 284 for definitions of "inspection" and "test". Grantor's authorization for inspections does not authorize**  
79 **Grantee to conduct testing of the Property. If Grantee requires testing contingencies, they should be specifically provided for at lines**  
80 **349 to 353. Grantor acknowledges that certain inspections or tests may detect environmental pollution which may be required to be**  
81 **reported to the Wisconsin Department of Natural Resources.**

82 ■ **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING:** Grantor shall maintain the Property until the earlier of closing  
83 or occupancy by Grantee in materially the same condition as of the date of acceptance of this Agreement. If, prior to the earlier of closing or  
84 occupancy by Grantee, the Property is damaged in an amount of not more than five per cent (5%) of the selling price, Grantor shall be  
85 obligated to restore the Property. If Grantor is unable to restore the Property, Grantor shall promptly notify Grantee in writing and this  
86 Agreement may be canceled at the option of the Grantee. If the damage shall exceed such sum, Grantor shall promptly notify Grantee  
87 in writing of the damage and this Agreement may be canceled at option of Grantee. Should Grantee elect to carry out this Agreement  
88 despite such damage, Grantee shall be entitled to any insurance proceeds relating to the damage to the Property, plus a credit towards  
89 the purchase price equal to the amount of Grantor's deductible on such policy.

90 ■ **PRE-CLOSING INSPECTION:** At a reasonable time, preapproved by Grantor or Grantor's agent, within 3 days before closing,  
91 Grantee shall have the right to inspect the Property to determine that there has been no significant change in the condition of the  
92 Property, except for changes approved by Grantee.

93 **OCCUPANCY** Occupancy of the entire Property shall be given to Grantee at time of closing unless otherwise provided in this Offer at  
94 lines 349-352 or in an addendum per line 353. Occupancy shall be given subject to tenant's rights, if any. **CAUTION: Consider an**  
95 **agreement which addresses responsibility for removal of personal property and debris prior to occupancy, if applicable.**

96 **ADDITIONAL FINANCING PROVISIONS**

97 ■ **LOAN COMMITMENT:** If this Agreement is contingent on financing, Grantee agrees to pay all customary financing costs (including  
98 closing fees), to apply for financing promptly, and to provide evidence of application promptly upon request of Grantor. If Grantee qualifies for  
99 said financing or other financing acceptable to Grantee, Grantee agrees to deliver to Grantor, or Grantor's agent, a copy of the written  
100 loan commitment no later than the deadline for loan commitment under the Financing Contingency. **Grantee's delivery of a copy of**  
101 **any written loan commitment (even if subject to conditions) shall satisfy the Grantee's financing contingency unless**  
102 **accompanied by a notice of unacceptability. CAUTION: GRANTEE, GRANTEE'S LENDER AND AGENTS OF GRANTEE OR**  
103 **GRANTOR SHOULD NOT DELIVER A LOAN COMMITMENT TO GRANTOR WITHOUT GRANTEE'S PRIOR APPROVAL OR**  
104 **UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.**

105 ■ **GRANTOR TERMINATION RIGHTS:** If Grantee does not make timely delivery of said commitment, Grantor may terminate this  
106 Agreement if Grantor delivers a written notice of termination to Grantee prior to Grantor's actual receipt of a copy of Grantee's written  
107 loan commitment.

108 ■ **FINANCING UNAVAILABILITY:** If this Agreement is contingent on financing and financing is not available on the terms stated, Grantee  
109 shall promptly deliver written notice to Grantor of same including copies of lender(s)' rejection letter(s) or other evidence of unavailability.  
110 Unless a specific loan source is named in the Financing Contingency, Grantor shall then have 5 days to give Grantee written notice of  
111 Grantor's decision to finance this transaction on the same terms set forth herein, and this Agreement shall remain in full force and effect,  
112 with the time for closing extended accordingly. If Grantor's notice is not timely given, this Agreement shall be null and void.

113 ■ **LAND CONTRACT:** If this Agreement provides for a land contract both Parties agree to execute a State Bar of Wisconsin Form 11  
114 Land Contract, the terms of which are incorporated into this Agreement by reference. Prior to execution of the land contract Grantor shall  
115 provide the same evidence of merchantable title as required above and written proof, at or before execution, that the total underlying  
116 indebtedness, if any, is not in excess of the proposed balance of the land contract, that the payments on the land contract are sufficient  
117 to meet all of the obligations of Grantor on the underlying indebtedness, and that all creditors whose consent is required have consented  
118 to the land contract sale. Grantor may terminate this Agreement if creditor approval cannot be obtained. Grantor may terminate this  
119 Agreement if Grantee does not provide a written credit report which indicates that Grantee is credit worthy based upon reasonable  
120 underwriting standards within 15 days of acceptance. Grantee shall pay all costs of obtaining creditor approval and the credit report.

122 **Note: The contingency at line 123 is part of this Offer if marked, such as with an "x," it is not if not so marked or marked N/A.**123 ☐ **FINANCING CONTINGENCY:** This Agreement is contingent upon ☐ First Party ☐ Second Party ☒ **CHECK ONE** ("Borrower" for  
124 the purpose of this contingency) being able to obtain: ☒ **CHECK APPLICABLE FINANCING BELOW**125 ☐ land contract financing from the Other Party at closing as further described at lines 128 to 147 and 113 to 120.126 ☐ a \_\_\_\_\_ ☐ **INSERT LOAN PROGRAM** (fixed) (adjustable) ☒ **STRIKE ONE** rate  
127 first mortgage loan commitment as further described at lines 128 to 141 and 97 to 112, within \_\_\_\_\_ days of acceptance of this Offer.  
128 The financing selected shall be in an amount of not less than \$\_\_\_\_\_ for a term of not less than \_\_\_\_\_ years, amortized  
129 over not less than \_\_\_\_\_ years. If the purchase price under this Offer is modified, the financed amount, unless otherwise  
130 provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly  
131 payments shall be adjusted as necessary to maintain the term and amortization stated above.132 **IF FINANCING IS FIXED RATE** the annual rate of interest shall not exceed \_\_\_\_\_% and monthly payments of principal and  
133 interest shall not exceed \$\_\_\_\_\_.134 **IF FINANCING IS ADJUSTABLE RATE** the initial annual interest rate shall not exceed \_\_\_\_\_%. The initial interest rate shall be  
135 fixed for \_\_\_\_\_ months, at which time the interest rate may be increased not more than \_\_\_\_\_% per year. The maximum interest  
136 rate during the mortgage term shall not exceed \_\_\_\_\_%. Initial monthly payments of principal and interest shall not exceed  
137 \$\_\_\_\_\_. Monthly payments of principal and interest may be adjusted to reflect interest changes.138 **MONTHLY PAYMENTS MAY ALSO INCLUDE** 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private  
139 mortgage insurance premiums. The mortgage may not include a prepayment premium. Buyer agrees to pay a loan fee in an amount not to  
140 exceed \_\_\_\_\_% of the loan. (Loan fee refers to discount points and/or loan origination fee, but DOES NOT include Buyer's other closing  
141 costs.) Note: Unless otherwise agreed, Buyer's delivery of any document labeled a loan commitment will satisfy this contingency.142 **IF FINANCING IS BY LAND CONTRACT** \$\_\_\_\_\_ shall be paid at closing (in addition to earnest money) interest rate  
143 following payment default shall be \_\_\_\_\_%, the default period shall be \_\_\_\_\_ days for payments and \_\_\_\_\_ days for performance of any  
144 other obligations. Interest shall be calculated on a ☐ prepaid ☐ postpaid ☒ **CHECK ONE** basis. The first payment shall be  
145 due \_\_\_\_\_. Any amount may be prepaid on principal without penalty at any time. If the term of the land contract is  
146 shorter than the amortization period, a balloon payment will be due at the end of the term of the land contract. ☐ Borrower  
147 ☐ Other Party ☒ **CHECK ONE** shall be responsible for the preparation of the land contract, including all costs of preparation.148 **FAIR MARKET VALUE** Fair market value (value) must be determined prior to completion of the transfer fee return per Wis. Stats. §77.22.  
149 Fair market value information may also be needed to determine if the transaction qualifies for a particular tax treatment and per lines  
150 174-177. See lines 260 to 262 for a definition of fair market value (value) per Wis. Stats. §77.21. If fair market value is available on the date of  
151 this agreement, state the fair market value of the properties:152 **PROPERTY ONE:** \$\_\_\_\_\_ **PROPERTY TWO:** \$\_\_\_\_\_.153 If fair market values are not stated in this Agreement, the Parties shall agree on the fair market values of the Properties, in writing, prior  
154 to \_\_\_\_\_ days before closing. If the Parties cannot agree by the deadline, the Parties shall submit this matter to binding arbitration and  
155 shall share the cost of arbitration equally. Should this matter go to arbitration, the date set for closing shall be extended accordingly.156 **RENTAL WEATHERIZATION** For each Property containing dwelling units, identify whether the transfer of the Property is or is not  
157 exempt from State of Wisconsin Rental Weatherization Standards (ILHR 67, Wisconsin Administrative Code). For each Property which  
158 is not exempt, identify which Party will be responsible for compliance, including costs of compliance:159 **PROPERTY ONE:** (is)(is not) ☒ **STRIKE ONE** exempt. **PROPERTY TWO:** (is)(is not) ☒ **STRIKE ONE** exempt. Party responsible for cost of  
160 compliance: **PROPERTY ONE:** (First Party) (Second Party) ☒ **STRIKE ONE** **PROPERTY TWO:** (First Party) (Second Party) ☒ **STRIKE ONE**.161 **PLACE OF CLOSING** This transaction is to be closed in escrow ☒ **STRIKE ESCROW LANGUAGE IF NOT APPLICABLE** at \_\_\_\_\_  
162 \_\_\_\_\_ no later than \_\_\_\_\_, \_\_\_\_\_ unless another date or place is agreed to  
163 in writing. See lines 204-214.) Escrow fees shall be the responsibility of: (First Party) (Second Party) (Shared equally) ☒ **STRIKE TWO**.164 **CLOSING PRORATIONS** The following items shall be prorated at closing: real estate taxes, rents, private and municipal charges,  
165 property owner's association assessments, fuel and \_\_\_\_\_166 \_\_\_\_\_. Any income, taxes or expenses shall  
167 accrue to Grantor, and be prorated, through the day prior to closing. Net general real estate taxes shall be prorated based on (the  
168 net general real estate taxes for the current year, if known, otherwise on the net general real estate taxes for the preceding year) (  
169 \_\_\_\_\_). ☒ **STRIKE AND COMPLETE AS APPLICABLE**170 **CAUTION: If Property has not been fully assessed for tax purposes (for example, recent land division or completed/pending**  
171 **reassessment) or if proration on the basis of net general real estate taxes is not acceptable (for example, changing mill rate),**  
172 **insert estimated annual tax or other basis for proration.**173 **TITLE EVIDENCE**174 ☒ **FORM OF TITLE EVIDENCE:** Seller shall give evidence of title in the form of an owner's policy of title insurance on a current ALTA  
175 form issued by an insurer licensed to write title insurance in Wisconsin. The policies shall be in the amount of (the Property's fair  
176 market value as defined at lines 148 to 155) (**PROPERTY ONE:** \$\_\_\_\_\_ **PROPERTY TWO:** \$\_\_\_\_\_ ☒ **STRIKE AND COMPLETE AS APPLICABLE**).177 ☒ **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Grantor shall convey the Property by warranty deed  
178 (or other conveyance as provided herein) free and clear of all liens and encumbrances, except: municipal and zoning ordinances and  
179 agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use  
180 restrictions and covenants, tenant's rights, general taxes levied in the year of closing and \_\_\_\_\_  
181 \_\_\_\_\_ (provided none of the foregoing prohibit present use of the Property), which constitutes merchantable title  
182 for purposes of this transaction. Grantor further agrees to complete and execute the documents necessary to record the conveyance.

185 **WARNING: If Grantee contemplates improving or developing Property, or a change in use, Grantee may need to address**  
186 **municipal and zoning ordinances, recorded building and use restrictions, covenants and easements which may prohibit**  
187 **some improvements or uses. The need for building permits, zoning variances, environmental audits, etc. may need to**  
188 **be investigated to determine feasibility of improvements, development or use changes for Property Contingencies for**  
189 **investigation of these issues may be added to this Agreement. See lines 349 to 353.**

190 ■ PROVISION OF MERCHANTABLE TITLE: Grantor shall pay all costs of providing title evidence. For purposes of closing, title evidence  
191 shall be acceptable if the commitment for the required title insurance is delivered to Grantee's attorney or to Grantee not less than 5 business  
192 days before closing, showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable,  
193 subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.

194 **CAUTION: IF TITLE EVIDENCE WILL BE GIVEN BY ABSTRACT, STRIKE TITLE INSURANCE PROVISIONS AND INSERT ABSTRACT PROVISIONS.**

195 ■ TITLE ACCEPTABLE FOR CLOSING: If title is not acceptable for closing, Grantee shall notify Grantor in writing of objections to title  
196 by the time set for closing. In such event, Grantor shall have a reasonable time, but not exceeding 15 days, to remove the objections,  
197 and the time for closing shall be extended as necessary for this purpose. In the event that Grantor is unable to remove said objections,  
198 Grantee shall have 5 days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall  
199 be extended accordingly. If Grantee does not waive the objections, this Agreement shall be null and void. Providing title evidence  
200 acceptable for closing does not extinguish Grantor's obligations to give merchantable title to Grantee.

201 ■ SPECIAL ASSESSMENTS: Special assessments, if any, for work on site actually commenced or levied prior to date of this  
202 Agreement shall be paid by Grantor no later than closing. All other special assessments shall be paid by Grantee. **CAUTION: See**  
203 **lines 275- 277 regarding other expenses. Consider a special agreement regarding these expenses, if applicable.**

#### 204 **ESCROW CLOSING**

205 If closing is to be conducted by escrow, each Party shall deposit with the escrow agent all funds and documents necessary to  
206 complete the exchange according to the terms of this Agreement. The escrow agent shall disburse the closing funds and  
207 record/file the documents promptly upon verification that, per the most current records available for review, the condition of title  
208 has not changed from the condition of title shown in the title commitment provided per lines 190 to 193, other than liens to be paid  
209 out of closing proceeds and other changes agreed to by the Parties. **CAUTION: CONSIDER THE POSSIBILITY OF GAPS IN**  
210 **TITLE RECORDS DUE TO DELAYS WHICH MAY OCCUR BETWEEN THE FILING OF DOCUMENTS FOR RECORDING AND**  
211 **THE AVAILABILITY OF THOSE DOCUMENTS FOR REVIEW BY THE ESCROW AGENT. IF TITLE INSURANCE IS BEING**  
212 **PROVIDED BY SELLER, A "GAP ENDORSEMENT" MAY BE AVAILABLE AND WOULD INSURE AGAINST LIENS OR**  
213 **ENCUMBRANCES FILED BETWEEN THE EFFECTIVE DATE OF THE TITLE SEARCH BY THE ESCROW AGENT AND THE**  
214 **RECORDING OF THE CONVEYANCE DOCUMENTS CALLED FOR BY THIS AGREEMENT.**

215 **ENTIRE AGREEMENT** This Agreement, including any amendments, contains the entire agreement of the Parties regarding the  
216 transaction. All prior negotiations and discussions have been merged into this Agreement. This Agreement binds and inures to  
217 the benefit of the Parties to this Agreement and their successors in interest.

#### 218 **COOPERATION WITH "LIKE KIND" EXCHANGE**

219 Grantor understands that Grantee may elect to consummate this transaction as part of a tax deferred "like kind" exchange under  
220 Section 1031 of the Internal Revenue Code. Grantor agrees to cooperate with Grantee in such exchange. Any costs associated  
221 with the exchange portion of the transaction shall be borne by the Grantee. In addition, Grantee hereby agrees to indemnify,  
222 defend, and hold Grantor harmless from and against any claim, suits, actions, damages, or liabilities as may arise as a reason of  
223 Grantor's cooperation with respect to the effectuation of a tax-deferred "like kind" exchange as contemplated herein.

#### 224 **DEFINITIONS**

225 ■ ACCEPTANCE: "Acceptance" occurs when all Grantees and Grantors have signed an identical copy of the Agreement, including  
226 signatures on separate but identical copies of the Agreement. See lines 28-30 regarding when this Agreement becomes binding.

227 ■ CONDITIONS AFFECTING THE PROPERTY OR TRANSACTION: A "condition affecting the Property or transaction" is defined as follows:

- 228 (a) planned or commenced public improvements which may result in special assessments or otherwise materially affect the Property or  
229 the present use of the Property;
- 230 (b) government agency or court order requiring repair, alteration or correction of any existing condition;
- 231 (c) completed or pending reassessment of the Property for property tax purposes;
- 232 (d) structural inadequacies which if not repaired will significantly shorten the expected normal life of the Property;
- 233 (e) any land division involving the Property, for which required state or local approvals were not obtained;
- 234 (f) construction or remodeling on the Property for which required state or local approvals were not obtained;
- 235 (g) any portion of the Property being in a 100 year floodplain, a wetland or shoreland zoning area under local, state or federal regulations;
- 236 (h) that a structure on the Property is designated as a historic building or that any part of the Property is in a historic district;
- 237 (i) material violations of environmental laws or other laws or agreements regulating the use of the Property;
- 238 (j) conditions constituting a significant health or safety hazard for occupants of the Property;
- 239 (k) underground storage tanks on the Property for storage of flammable or combustible liquids including but not limited to gasoline and  
240 heating oil; NOTE: The Wisconsin Administrative Code contains registration and operation rules for such underground storage tanks.
- 241 (l) underground or aboveground storage tanks for storage of flammable, combustible or hazardous materials including but not limited  
242 to gasoline and heating oil, which are currently or which were previously located on the Property;
- 243 (m) high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property;
- 244 (n) material levels of hazardous substances located on Property or previous storage of material amounts of hazardous substances on Property;
- 245 (o) other conditions or occurrences which would significantly reduce the value of the Property to a reasonable person with knowledge  
246 of the nature and scope of the condition or occurrence.

247 ■ ENVIRONMENTAL SITE ASSESSMENT: [page 5 of 6, WB-35]

248 An "environmental site assessment" may include, but is not limited to: (1) an inspection of the Property; (2) a review of the  
249 ownership and use history of the Property, including a search of title records showing private ownership of the Property for a period of  
250 80 years prior to the visual inspection; (3) a review of historic and recent aerial photographs of the Property, if available; (4) a review of  
251 environmental licenses, permits or orders issued with respect to the Property; (5) an evaluation of results of any environmental  
252 sampling and analysis that has been conducted on the Property; and (6) a review to determine if the Property is listed in any of the  
253 written compilations of sites or facilities considered to pose a threat to human health or the environment including the National Priorities  
254 List, the Department of Natural Resources' (DNR) registry of Abandoned Landfills, the DNR's Registry of Leaking Underground Storage  
255 Tanks, the DNR's most recent remedial response site evaluation report (including the Inventory of Sites and Facilities Which May Cause  
256 or Threaten to Cause Environmental Pollution). Any "environmental site assessment" performed under this Agreement shall comply  
257 with generally recognized industry standards (e.g. current American Society of Testing and Materials "Standards for Environmental Site  
258 Assessments for Commercial Real Estate"), state and federal guidelines, as applicable. **Caution: Unless otherwise agreed an**  
259 **"environmental site assessment" does not include testing of the Property for environmental pollution.**

260 ■ FAIR MARKET VALUE: Fair market value (value), as defined in Wis. Stats. §77.21 means: "The estimated price the property would bring in  
261 an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both  
262 conversant with the property and at prevailing general price levels."

263 ■ FIXTURES: A "fixture" is an item of property which is physically attached to or so closely associated with land and  
264 improvements so as to be treated as part of the real estate, including, without limitation, physically attached items not  
265 easily removable without damage to the Property, items specifically adapted to the Property, and items customarily treated  
266 as fixtures. A "fixture" does not include trade fixtures owned by tenants of the Property. See Lines 15 to 25.

267 ■ GRANTEE: "Grantee" as used in this Agreement refers to a Party who will receive an interest in Property under this Agreement. Any  
268 warranties, representations, covenants, rights or obligations of a Grantee under this Agreement apply to the transfer(s) of Property wherein  
269 the Grantee is receiving an interest in Property.

270 ■ GRANTOR: "Grantor" as used in this Agreement refers to a Party conveying an interest in Property under this Agreement. Any  
271 warranties, representations, covenants, rights or obligations of a Grantor under this Agreement apply to the transfer(s) of Property wherein  
272 Grantor is the Party conveying an interest in Property.

273 ■ INSPECTION: An "inspection" is defined as an observation of the Property which does not include testing of the Property.

274 ■ OTHER EXPENSES: In addition to "special assessments for work on site", government entities may charge one-time or ongoing use fees  
275 for other public improvements relating to curb, gutter, street, sidewalk, sanitary and storm sewer (including all sewer mains and hook-up and  
276 interceptor charges), parks, street lighting and street trees, and impact fees for other public facilities, as defined in Wis. Stats. 66.55(1)(c) & (f).

277 ■ PROPERTY: "Property" refers to PROPERTY ONE, PROPERTY TWO or both as indicated by the context within this Agreement.

278 ■ TEST: A "test" is defined as the taking of samples of materials such as soils, water or building materials from the Property and the laboratory  
279 or other analysis of these materials. Note: Any contingency authorizing such tests should specify the areas of the Property to be tested,  
280 the purpose of the test, (e.g. to determine the presence or absence of environmental contamination), any limitations on Grantee's testing and  
281 any other material terms of the contingency (e.g. Grantee's obligation to return the Property to its original condition).

282 ■ DEFAULT: Grantor and Grantee each have the legal duty to use good faith and due diligence in completing the terms and conditions of  
283 this Agreement. A material failure to perform any obligation under this Agreement is a default which may subject the defaulting party to  
284 liability for damages or other legal remedies.

285 If Grantee defaults, Grantor may:

- 286 (1) sue for specific performance and request the earnest money, if any, as partial payment of Grantee's obligations under  
287 this Agreement; or  
288 (2) terminate the Agreement and have the option to: (a) request the earnest money, if any, as liquidated damages; or (b)  
289 direct Broker to return the earnest money, if any, and have the option to sue for actual damages.

290 If Grantor defaults, Grantee may:

- 291 (1) sue for specific performance; or  
292 (2) terminate the Agreement and request the return of any earnest money paid, sue for actual damages, or both.

293 In addition, the Parties may seek any other remedies available in law or equity.

294 If a default or other circumstance result in the termination of one Party's duties as Grantor or Grantee, the entire Agreement shall be  
295 terminated.

296 The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the  
297 discretion of the courts. If either Party defaults, the Parties may renegotiate the Agreement or seek nonjudicial dispute resolution instead  
298 of the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those disputes  
299 covered by the arbitration agreement.

300 NOTE: BROKERS MAY PROVIDE A GENERAL EXPLANATION OF THE PROVISIONS OF THE AGREEMENT BUT WISCONSIN LICENSE LAW PROHIBITS A  
301 BROKER FROM GIVING ADVICE OR OPINIONS CONCERNING THE LEGAL RIGHTS OR OBLIGATIONS OF PARTIES TO A TRANSACTION OR THE LEGAL  
302 EFFECT OF A SPECIFIC CONTRACT OR CONVEYANCE. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS REQUIRED.

303 ■ BROKER'S COMPENSATION

304 The Parties acknowledge and agree that each Broker may receive compensation from persons other than their client in the transaction.

305 **Caution: This consent does not satisfy the requirements for the Parties' consent to multiple representation if said consent**  
306 **is required under Wisconsin Statutes 452.137.**

308 ☐ **ENVIRONMENTAL EVALUATION/INSPECTION CONTINGENCY:** This Agreement is contingent upon ☐ First Party ☐ Second Party ☐ CHECK ONE  
 309 ("Investigating Party" for the purpose of this contingency) being able to obtain: ☐ CHECK APPLICABLE PARAGRAPH(S)

310 ☐ A written report from a qualified independent environmental consultant of the Investigating Party's choice, who has conducted an  
 311 environmental site assessment (see lines 247 to 259) of the Other Party's Property, at ☐ Investigating Party's ☐ Other Party's ☐ CHECK ONE  
 312 expense, which discloses no defects. A defect is defined as a material violation of environmental laws, a material contingent liability affecting  
 313 the Property arising under any environmental laws, the presence of an underground storage tank(s) or material levels of hazardous substances  
 314 either on the Property or presenting a significant risk of contaminating the Property due to future migration from other properties.

315 ☐ A qualified independent inspector of Investigating Party's choice conducting an inspection of the Other Party's Property and  
 316 \_\_\_\_\_ which discloses no  
 317 defects as defined at lines 322 to 326. The inspection shall be at ☐ Investigating Party's ☐ Other Party's ☐ CHECK ONE expense.

318 ☐ An inspection by Investigating Party of the Other Party's Property which discloses no defects as defined at lines 322 to 326.  
 319 This contingency shall be deemed satisfied unless Investigating Party, within \_\_\_\_\_ days of acceptance, delivers to the Other Party a copy  
 320 of a written notice listing the defect(s) identified in the environmental site assessment /inspection which are being objected to  
 321 and a copy of the environmental site assessment/ inspection report(s), if a third-party evaluation/inspection is performed.

322 A defect is defined as a structural, mechanical or other condition would have a significant adverse effect on the value of the Property;  
 323 that would significantly impair the health and safety of future occupants of the Property; or that if not repaired, removed or replaced would  
 324 significantly shorten or have a significantly adverse effect on the expected normal life of the Property. Defects do not include conditions  
 325 the nature and extent of which the Investigating Party had actual knowledge or written notice before signing the Agreement. Investigating  
 326 Party agrees to deliver a copy of the report and notice to Listing Broker, if Property is listed, promptly upon delivery to the Other Party.

327 ☐ **DOCUMENT REVIEW CONTINGENCY:**

328 This Agreement is contingent upon ☐ First Party ☐ Second Party ☐ CHECK ONE providing the Other Party with  
 329 ☐ CHECK APPLICABLE PARAGRAPH(S), no later than \_\_\_\_\_ days from acceptance:

330 ☐ Copies of all current leases, lease applications of all current tenants and service contracts applicable to Property being transferred  
 331 to the Other Party Which shall be consistent with all prior representations.

332 ☐ The opportunity to inspect, at reasonable times upon reasonable notice, the books and records of the Property being transferred  
 333 to the Other Party as may be necessary to verify that the income and expenses for the year(s)  
 334 are consistent with all prior representations.

335 ☐ Other \_\_\_\_\_  
 336 This contingency will be satisfied unless the Other Party, within \_\_\_\_\_ days of the earlier of: 1) the deadline at line 329 or 2) the date the  
 337 Other Party has received or been given the opportunity to inspect all of the documents specified above, delivers written notice indicating  
 338 that this contingency has not been satisfied. The notice shall identify which document(s) have not been timely delivered/made available for  
 339 inspection or have been disapproved by the Other Party.

340 ☐ **TAX QUALIFICATION CONTINGENCY:** This Agreement is contingent upon ☐ First Party ☐ Second Party ☐ CHECK ONE OR BOTH  
 341 obtaining a written opinion from a qualified tax advisor that this transaction qualifies for the benefits under Section 1031 of the Internal  
 342 Revenue Code. The qualified tax advisor shall be an attorney, CPA or \_\_\_\_\_

343 \_\_\_\_\_ ☐ IDENTIFY BY PROFESSION OR NAME This contingency shall be deemed satisfied unless a copy of a  
 344 written opinion from the qualified tax advisor indicating that this transaction does not qualify for the benefits under Section 1031 of the  
 345 Internal Revenue Code is delivered to the Other Party within \_\_\_\_\_ days of the latter of acceptance or agreement as to fair market value.

346 **CAUTION: THIS TRANSACTION MAY HAVE SIGNIFICANT TAX CONSEQUENCES. Tax advisors should be consulted if either**  
 347 **party requires that the transaction qualify as a deferred (Starker) exchange or for other particular tax treatment. NOTE: If**  
 348 **any of the above contingencies must be used by both parties, attach addendum setting forth the duplicate contingency.**

349 **ADDITIONAL PROVISIONS/CONTINGENCIES** \_\_\_\_\_

350 \_\_\_\_\_  
 351 \_\_\_\_\_  
 352 \_\_\_\_\_

353 ☐ **ADDENDA:** The attached \_\_\_\_\_ is/are made part of this Agreement.

354 This Agreement was drafted on \_\_\_\_\_ by \_\_\_\_\_  
 355 (Date) (Licensee and Firm)

356 **IF ACCEPTED (see lines 225 to 226), THIS AGREEMENT CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD READ THIS DOCUMENT**  
 357 **CAREFULLY. BY SIGNING BELOW EACH PARTY AGREES TO BE BOUND BY THIS AGREEMENT. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE**  
 358 **IN THIS AGREEMENT SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. THE UNDERSIGNED HEREBY AGREE TO CONVEY THE ABOVE-MENTIONED**  
 359 **PROPERTY ON THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT.**

360 (x) \_\_\_\_\_  
 361 First Party's Signature ▲ Print Name here: ► Social Security No. or FEIN (Optional) ▲ Date ▲

362 (x) \_\_\_\_\_  
 362 First Party's Signature ▲ Print Name here: ► Social Security No. or FEIN (Optional) ▲ Date ▲

364 (x) \_\_\_\_\_  
 365 Second Party's Signature ▲ Print Name here: ► Social Security No. or FEIN (Optional) ▲ Date ▲

366 (x) \_\_\_\_\_  
 367 Second Party's Signature ▲ Print Name here: ► Social Security No. or FEIN (Optional) ▲ Date ▲